

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

W.A. No.909 of 2001 and
C.M.P.No.8262 of 2001

Thangarasu Mudaliar .. Appellant (Petitioner)

-vs-

1.The Government of Tamil Nadu,
rep. by its Commissioner and Secretary
to Government,
Backward Classes & Most Backward Classes
Welfare Department,
Secretariat, Chennai - 9.

2. Special Tahsildar (Relief)
Ariyalur. .. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order made in W.P.No.2606 of 1993 dated 19.03.2001 . W.P.No.2606 of 2001 Petition presented to this Court under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records pertaining to the order of the first respondent in G.O.Ms.No.3 (D) 72 Backward Classes and Most Backward classes Department dated 28.02.1992.

For Appellant : Mr.C.Selvaraju, S.C.
For Mr.S.Mani

For Respondents : Mr.P.Subramaniam, G.A.

J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 19.03.2001 made in W.P.No.2606 of 1993, in and by which the learned Judge, after finding that the writ petition has been filed after passing of the award, dismissed W.P.Nos.2659 and 2606 of 1993. The present writ appeal is by the petitioner in W.P.No.2606 of 1993.

2. Heard the learned counsel appearing for the appellant as well as the learned Government Advocate.

3. A perusal of the relief sought for by the petitioner shows that he has filed the writ petition praying to quash the declaration under Section 6 made in G.O.Ms.No.3(D)72, Backward Classes and Most Backward Classes Department, dated 28.02.1992. Though a counter affidavit has been filed on behalf of the first respondent, namely, the Joint Secretary to Government, Backward Classes and Most Backward Classes Welfare Department, Chennai - 9 which shows that the award has not been passed and at that time, it was at the stage of approval, however, while hearing the writ petition, a representation was made by the learned Government Pleader that "...the award was passed on 22.1.1993, and possession was also taken on 18.2.1993 itself." Accepting the above statement and following the decision of the Apex Court reported in 1996(11)SCC 698[Star Wire (India) Ltd., vs. State of Haryana], the learned single Judge dismissed the writ petition on the ground of delay and laches.

4. Mr.C.Selvaraju, the learned Senior Counsel appearing for the appellant submitted that both the information, namely, the passing of the award and the possession alleged to have been taken were not correct and contrary to the record as well as the information mentioned in the counter affidavit filed by the first respondent.

5. Learned Government Advocate has placed the record which shows that the award was passed only on 22.03.1994. We verified the same from the records produced by the learned Government Advocate. On the other hand, in paragraph No.4, the learned Judge has recorded the statement of the learned Government Pleader that the award was passed on 22.01.1993, which is factually incorrect. When the award was passed only on 22.03.1994, the other factual statement recorded by the learned Judge, viz., possession was taken on 18.02.1993 is also incorrect. On going through the records, we are satisfied that the award was passed only on 22.03.1994, whereas, the writ petition was filed by the petitioner on 08.02.1993, well prior to the passing of the award. In such circumstances, it is but proper on the part of the learned Judge to go into the merits of the claim made by the petitioner and dispose of the writ petition one way or other. Such recourse has not been followed by the learned Judge. In such circumstances, we have no other option except to remit the matter to the learned single Judge for fresh disposal on merits.

6. Accordingly, the order of the learned Judge dated 19.03.2001 is set aside and the writ appeal is allowed and remitted to the learned Judge for fresh disposal on merits. No costs. Consequently, connected miscellaneous petition is closed.

7. Inasmuch as the writ petition is of the year 1993, the Registry is directed to include the writ petition immediately before the concerned Judge dealing with the subject for final disposal.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gms

To

1. The Commissioner and Secretary to Government,
Government of Tamil Nadu,
Backward Classes & Most Backward Classes
Welfare Department, Secretariat, Chennai - 9.

2. Special Tahsildar (Relief), Ariyalur.

3. The Section Officer,
Writ Section,
High Court, Madras.

1 cc to Mr. S. Mani Advocate, Sr. 50600

1 cc to Government Pleader, sr. 50029

W.A.No.909 of 2001

PV (CO)
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